



**HOUSE OF REPRESENTATIVES**

*Hale o nā Luna Makaʻāinana*

STATE OF HAWAII  
STATE CAPITOL, ROOM 431  
415 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96813

April 3, 2023

Trustee Carmen "Hulu" Lindsey, Chair  
and Board of Trustees  
Office of Hawaiian Affairs  
560 N. Nimitz Highway, #200  
Honolulu, HI 96817

**SUBJECT: Senate Bill No. 1235, S.D. 2, H.D. 1 (Proposed)**

Dear Chair Lindsey and Trustees:

Thank you for meeting with me on Friday. I thought it was a great opportunity to meet in person and to exchange our aspirations regarding the Office of Hawaiian Affairs ("OHA") and Kakaʻako Makai. As a follow up to your suggestion, I am providing in writing the proposal that I conveyed at our meeting.

Before detailing my proposal, I would like to reiterate the following points that I communicated on Friday. First, I am speaking on behalf of the House of Representatives, and not the Senate. Second, I am not speaking on behalf of Friends of Kewalos and am not attempting to advocate their position with respect to the disposition of Kakaʻako Makai.

**Background**

By way of background, I would like to summarize my understanding of the events that have led us to this current point in time.

In 2012, OHA received 9 parcels at Kakaʻako Makai in satisfaction of \$200 million owed to OHA for proceeds from the public trust lands from November 7, 1978 to June 30, 2012. (Act 15, SLH 2012)

An OHA appraisal set the value of the parcels at \$200 million. The State did not conduct a full appraisal as the State appraiser's assessment was substantially similar to the OHA full appraisal.

**The appraisal assumed conveyance of the lands "as is"**, including the allowable uses and restrictions. One of the restrictions was a prohibition on residential development, enacted into law in 2006, six years prior to the OHA settlement. Included in allowable uses are lower

density commercial, office, retail, up to 200 feet on some of the parcels. Act 15 authorizes the state to obtain easements over Kaka‘ako Makai, as long as just compensation is paid to OHA. **The residential development prohibition, which applies to all lands that are makai of Ala Moana Boulevard, not only the lands that are OHA lands, was enacted into law after several years of strong and consistent community opposition against high rise density.** The information provided by prospective developers showed that high rise (400 feet) density would be required if there were to be residential because the costs of low-rise density would not be able to be recovered unless the units were heavily subsidized or sold as ultra luxury condos. Also, concerns have been raised regarding the environmental impact of foundation drilling and airline flight path obstruction.

OHA’s desire to provide fee simple affordable housing is commendable. The Kaka‘ako Makai properties are not suited for housing, unless OHA expects to subsidize it and take little or no profit. Further, unless OHA plans on a land exchange or gift to DHHL that would subsequently be accepted as trust lands, then under federal law the housing built at Kaka‘ako Makai could not be designated for just Hawaiians.

OHA believes that the current value of the land is significantly lower, and their appraiser, FTI Consulting, set the 2023 value as \$43.6 million assuming a continuation of the residential prohibition. FTI values the property with residential at \$94.7 million. **OHA’s lower evaluation is sharply contrasted by the current property assessment value established by the City and County of Honolulu at \$283.7 million.**

### **Proposal**

My proposal consists of four parts that may be incorporated into S.B. 1235, S.D. 2, H.D. 1 (Proposed), if there is sufficient time to do so. However, to clarify, this bill has not been scheduled for a public hearing as there is insufficient consensus by OHA at this time. S.B. 1235, S.D. 2, H.D. 1 (Proposed) proposes to provide just compensation to OHA for a perpetual easement that prohibits residential development in order to preserve public access, scenic views, and building height and density. The terms of the perpetual easement will be negotiated between OHA and the Hawaii Community Development Authority.

Upon the filing of the perpetual easement:

- Just compensation of \$100 million for the perpetual easement will be paid to OHA;
- \$65 million will be available for wharf repairs;
- The interim pro rata portion of public land trust income and proceeds to OHA will increase from \$21.5 million to \$25 million on July 1, 2024, and increase annually thereafter according to a formula of a three-year average percentage of the consumer price index (CPI) not including energy and food for urban Hawai‘i; and
- \$100,000 will be made available to the Department of Land and Natural Resources to make the data and information on the public land trust (inventory) easily searchable by the public.

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June 30, 2024, is the deadline to record the perpetual easement with the Bureau of Land Conveyances. If not executed and recorded by June 30, 2024, then all other provisions of this bill will lapse and the Act will be repealed.

This proposal is premised upon the current state budget surplus, and there is no guarantee that a surplus will exist in the future that would allow the Legislature to consider the payments mentioned here.

I hope that this clarifies my proposal and enables the Trustees to better evaluate it.

Again, thank you for meeting with me. Please do not hesitate to contact me at (808) 586-6100 if you have any questions or require further clarification.

Sincerely,



Scott K. Saiki  
Speaker of the House

cc: Governor Josh Green, M.D.  
Representative Daniel Holt, Native Hawaiian Caucus Co-Chair  
Senator Jarrett Keohokalole, Native Hawaiian Caucus Co-Chair  
Senator Sharon Y. Moriwaki, Senate District 12